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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/517,490 | 12/10/2004 | Iwao Yamazaki | 04173.0461-00000 | 5583 |
| 22852 | 7590 | 02/20/2009 | | |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413 | | | EXAMINER HOEKSTRA, JEFFREY GERDEN | |
| | | | ART UNIT 3736 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/517,490

Applicant(s)

YAMAZAKI ET AL.

Examiner

JEFFREY G. HOEKSTRA

Art Unit

3736

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736

/Jeffrey G Hoekstra/
Examiner, Art Unit 3736

Continuation of 11, does NOT place the application in condition for allowance because:

Applicants request for reconsideration has been considered, does not place the application in condition for allowance and in response the Examiner notes the following:

Applicant argues Shimomura in view of Kawanishi fails to disclose, teach, and/or fairly suggest the claimed invention, specifically arguing "Shimomura fails to teach or suggest "means for calculating at least one of approximate values of bone weight, water weight, and muscular weight of the body, as well as means for judging a somatotype of the body... classified on the basis of a correlation between the approximate values as calculated and the body weight". The Examiner disagrees, maintains and reiterates the Final rejection of the claims mailed 10/30/2008, and in response notes the following:

As "broadly" as claimed, Shimomura discloses and teaches "means for calculating a muscular weight of the body on the basis of measured impedance and [said] personal information put into the display equipment" (as previously cited) and "means for judging a somatotype of the boy, the somatotype being classified on the basis of a correlation between the approximate value[s] as calculated and the body weight" (as previously cited).

Moreover, the Examiner Applicant appears to rely heavily upon "an approximate value of muscular weight" for patentability over Shimomura, arguing Shimomura does not disclose "an approximate value of muscular weight" and conversely discloses a lean mass index (LMI) wherein the "index" does not correspond to "an approximate value of muscular weight". The Examiner disagrees and notes absent any special definition in the instant Specification upon which Applicant does not appear to be relying, the claims are being treated on the merits with their broadest reasonable interpretation consistent with the plain meaning of the claimed limitations therein. As such the term "approximate" may be defined as "near or approaching a certain state" or "not perfectly accurate or correct". Shimomura discloses and teaches the calculation of various body parameters with respect to inputted personal information of a subject, wherein the body parameters include calculations of values and representations thereof as indices and comprise at least an "approximate value of muscular weight".

"Furthermore, the Examiner in support of Shimomura disclosing a means for calculating an "approximate value of muscular weight" notes Shimomura explicitly states (see column 8 line 54 - column 9 line 45) the following:

"Further, although in the above-described representation mode, the LMI has been indicated as an index of the lean tissue, the representation mode may be modified so that the LMI may be treated as an index of the muscular tissue since generally the lean tissue is mostly consisting of the muscular tissue. Thereby, providing an indication of whether the muscle mass being more or less rather than the indication of the lean tissue mass, which is unfamiliar word to the ordinary people, can help the subject understand the indication more easily.

"Further, instead of the indication form using the block building as shown in FIG. 11, a human body figure may be employed, wherein the figure may have an enlarged outer contour for a higher BMI while it may have a reduced outer contour for a lower BMI, and further the color within the figure may be changed according to the ratio of the FMI to the LMI to indicate distinctively the ratio of the body fat to the muscle.

"Still further, although in the above embodiments, the present invention has been described as the body type determination apparatus, in which the BMI, the FMI and the LMI have been calculated from the measured impedance and the results are provided in the form of graphic representation, the apparatus may be designed as a body type determination apparatus capable of measuring the body fat as well, in which the body type determination function according to the present invention is incorporated into a prior-art body fat meter in a built-in manner.

"Yet further, although in the above embodiments, the body weight has been measured together with the bioelectric impedance at the same time, the apparatus may be designed such that the body weight may be entered by using an input device, and also the bioelectric impedance is not necessarily measured between the feet but can be measured between hands or between a hand and a foot.

"Effect of the Invention

"According to a body type determination apparatus of the present invention, which measures a bioelectric impedance, calculates a BMI, a FMI and a LMI from entered body data, and provides a matrix representation or a indication by way of a simple geometry to facilitate an easy understanding of a relationship between the BMI and the FMI and/or a relationship between the BMI and the LMI, it may be possible to grasp the ratio of occupancy of fat tissue and lean tissue in the body constitution and to provide a comprehensive evaluation on the body type.

"Since a subject can grasp the fat mass and the lean mass, undesirably excessive diet may be practiced on lesser occasions, and the risk of giving a hazard to health may be reduced.

"Especially, the present invention allows the lean mass to be known and thus the muscle mass to be grasped, which is useful to grasp a basal metabolic amount, though not much attention has been paid until now, and thus the subject can see whether or not his/her body is a type of body that is apt to gain the body fat. Thereby, in the case of the body of the subject being categorized as the type that is more likely to gain the body fat, the subject may try to be more careful in his/her daily life in advance and thus to prevent the obesity."